58TH CONGRESS, 2d Session. } SENATE. { DOCUMENT No. 168.

STATE CONTROL OF INTERSTATE LIQUOR TRAFFIC.

Mr. HANSBROUGH presented the following

EXCERPTS FROM HEARING BEFORE THE COMMITTEE ON INTERSTATE COMMERCE HAVING UNDER CONSIDERATION THE BILL TO LIMIT THE EFFECT OF THE REGULATIONS OF COMMERCE BETWEEN THE SEVERAL STATES AND WITH FOREIGN COUNTRIES IN CERTAIN CASES.

FEBRUARY 25, 1904.—Ordered to be printed.

ARGUMENT OF REV. EDWIN C. DINWIDDIE, LEGISLATIVE SUPERINTENDENT OF THE AMERICAN ANTISALOON LEAGUE, WITH HEADQUARTERS IN WASHINGTON, D. C., IN FAVOR OF THE ACT.

This proposed law is designed to supplement what was known as the Wilson law, approved August 8, 1890, and by which undoubtedly Congress and the people expected that the entire control of the liquor traffic within their own borders should be in the hands of the several States.

A few facts relative to the necessity for that legislation, as well as for that proposed, will be entirely in place.

Immediately after a decision by the Supreme Court in 1890, in the case of Leisy *v.* Hardin, in which it was held that "The State had no power, without Congressional permission to do so, to interfere by seizure, or by any other action, in the prohibition of importation and sale by a foreign or nonresident importer of liquors in unbroken original packages," there sprung up in several of the States under the prohibitory policy great numbers of what were called "original package" saloons. The proprietors would buy their liquors without the State and have them sent in and sell them in the unbroken original packages, although the law of the State or the community in which they did business forbade the traffic in intoxicating liquors. This created widespread indignation and gave rise to a stern demand from over all the country for redress from these unbearable conditions. Congress responded, as it had been suggested in the opinion of the court in the case just referred to it could do, by passing the Wilson law, which reads as follows:

That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police

powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

In construing this law, after having passed upon its constituionality in Rehrer's case, the court held in the subsequent case, namely, Rhodes *v.* Iowa (170 U. S., 412), that the effect of the law was to forbid the sale by a consignee of liquors imported from another State, but that the language of the Wilson law in the words, "arrival in such State," etc., contemplated their delivery to the consignee before State jurisdiction should attach.

It is in consequence of this decision that the remedial legislation proposed in House bill 15331 has been pressed for passage. It is true that the "original package" saloons, as they were known thirteen years ago, are not in operation, but the ingenuous violators of laws—brewers, wholesale liquor dealers, retail venders, and others—have invented a number of subterfuges by the employment of interstate transportation agencies for the violation of law. It should be borne in mind that the bill before the committee is not in any sense a prohibition law per se, nor will its passage affect only those States having a prohibitory policy. The conditions it is designed to remove can exist in States having the license or dispensary policy and do so exist to the extent of rendering even regulatory legislation of this character to a greater or less extent nugatory; and they exist in aggravated form in States having prohibitory or local-option laws.

We base our request for the passage of the law upon the broad principle that Congress should by law, as we believe it to be fully empowered to do under the Constitution, remove the obstacles to the successful carrying out of the internal policy of the State on this question, whatever that policy may be. Nor can it be truthfully declared that an inconsiderable portion of our territory is affected by the conditions which the decision of the Supreme Court on the Wilson law, in the case of Rhodes *v.* Iowa, has permitted to spring up and flourish in many sections. I think it is safe to say that not less than thirty States of the Union have prohibitory or local-option laws in some form or another. Indeed, it is doubtful if the number is not still greater, and in many of these States large areas, including towns, townships, and counties, are under the operation of the local-option laws. And it is impossible for them to enjoy the full fruitage of laws enacted, as we believe, in the proper exercise of their police powers, uniformly held by the court to be reserved to the States without the remedial legislation asked, and which undoubtedly Congress intended to grant by the Wilson Act, approved August 8, 1890.

We are asking for no more than is fair and right under the constitutional powers of Congress when we ask that Congress shall so legislate upon the subject as that the States will have complete jurisdiction over the subject within their own borders; and so that a nonresident of a State, with the connivance of the agents of interstate transportation agencies, will not be permitted to do what the State properly, in the exercise of its judgment on this question, has forbidden its own citizens to do. This whole question has been very carefully canvassed by many of those familiar with the conditions, and also versed in the law, and the legislation now proposed is believed to approach close to a proper solution of the question, and as remaining within the probability, if not the certainty, of the constitutional power of Congress.

And we therefore earnestly hope that the committee will favorably consider the measure before it and recommend its passage by the Senate. Cases of violation of State law which are against its policy and detrimental to the health and morals and prosperity of its people are possible under the present laws as construed by the Supreme Court. Instance after instance of this kind in various States could be cited. It seems to me that nothing more trustworthy or nothing more important to the consideration of this committee and the Congress with reference to the need for such legislation and the intolerable situation with which many States are confronted can be cited than the statement of one of the members of the House who has personal knowledge of conditions in his State both as a citizen and as a judge upon the bench. And I take the liberty therefore of calling to your attention the remarks of this gentleman, the Hon. W. I. Smith, of Iowa, who said:

Mr. Speaker, in the case of Leisy *v.* Hardin the Supreme Court of the United States held that under the interstate-commerce clause of the Constitution one had a right to ship liquor into a State in original packages and there sell it in unbroken packages. Immediately after the decision was handed down Congress passed the Wilson bill providing that upon the arrival of liquors in a State they should be subject to the police regulations thereof. The United States Supreme Court, in the Rhodes case, held that "arrival" meant delivery to the consignee. Under this holding the practice has grown up in Iowa by which a nonresident ships a large number of jugs into the State addressed to himself, and then the soliciting agent goes about selling these liquors at retail in the town and simply transfers bills of lading, thus carrying on a retail business in that town in violation of the will of a majority of its people and using the express office as a retail liquor place.

So flagrant has it become in Iowa that in one of the towns of Colonel Hepburn's own county, when I had the honor of presiding on the bench in that district, as high as 100 jugs at a time were found in a certain express office addressed by the consignors to himself as consignee, without any indication that they should all be delivered, except to the several assignees of the bills of lading that might be found after the arrival of the goods in the State.

Under the decesion of the Rhodes case these liquors were not subject to seizure and could be kept there in large quantities in the office of the express company and retailed from there to whomever would pay the case charges, the value of the liquor, and the cost of transportation. This harm has been so flagrantly conducted that the State supreme court during the last session ordered a writ of injunction to issue against one of the express companies, enjoining it from maintaining one of its offices as a place wherein to carry on the traffic of intoxicating liquors.

So flagrant has it become that the Iowa supreme court recently ordered the destruction of a large number of boxes containing liquor, found in the office of the express company, upon the theory that where they were sent C. O. D. in this way they were not sold until delivered and therefore not within the protection of the interstate-commerce clause of the Constitution.

* * * * * * *

Now, if we don't want this traffic carried on we ought to have the right to prevent a nonresident Iowan living in Brother Bartholdt's district sending liquor to himself in a dry town, insisting that under the decision of the Rhodes case they are entitled to immunity from seizure until they are delivered to the assignee, when he does not intend to receive them, and retailing these liquors to whomever will come up and advance the value of the liquor and the cost of transportation.

Similar statements were made by Mr. Hepburn, the author of the bill, who made the following statement in its support on the floor of the House:

This bill is substantially the act of 1890, with the addition that in the first section we have inserted the words "before and after delivery." There is no difference between the first section of this bill and the present section except the introduction of those words. The original bill made intoxicating liquors introduced into a State subject to the law of the State upon "arrival" within the boundaries of the State. Now the Supreme Court elected to construe that to mean after the delivery of the liquors within the boundaries of the State. After the delivery the State lost sight of

the liquors and practically lost jurisdiction over them. The State authorities could do nothing in the way of the enforcement of the law, and therefore they have sought this legislation, giving a State jurisdiction either before or after delivery, after arrival within the limits of the State. And why should not this be so? Why should not the State of Missouri have jurisdiction over the importation of liquors within the State and designed for use in the State?

* * * * * * *

It will give the State of Iowa the power to destroy liquors when brought within the State if they are there in opposition to the provisions of the law of that State. It prevents the importer from fighting the statute of Iowa, because of the interstate-commerce clause of the Constitution and the legislation thereunder. It will not prevent the introduction of liquor by any private individual unless it is brought there for some illegal purpose. It is not illegal for the gentleman to carry liquors into the State of Iowa for his own consumption. There is no statute of that kind. It is the illegal sale of the liquor that our statute has been enacted to prohibit.

* * * * * * *

We simply want to exercise our power over liquors imported into the State, the power that we would have the right to exercise but for the original-package clause of the Federal law. That is all.

Similar statements were made by Judge Lot Thomas, of Iowa, and by Mr. Clayton, of Alabama, who reported the bill from the Committee on the Judiciary. Similar experiences have been complained of to our national headquarters and urgent appeals for our assistance in securing the passage of this remedial legislation from the States of Ohio, West Virginia, Maryland, Kansas, North Dakota, Washington, and from many other States, both North and South.

A law was enacted by the last legislature in the State of Ohio giving the municipalities of that State the right to exclude the saloons by public vote, and considerably over 100 cities and towns have availed themselves of this privilege during the last six or seven months. And the State attorney of our organization, as well as the executive head, representing the federation of all the churches and temperance organizations, have appealed to us for our help in securing the passage of this measure. In one of the counties of the State, from which, by the operation of local option in the townships and municipalities of the county, the saloons have been excluded, the agents of two of the interstate transportation companies have been doing a regular C. O. D. liquor business in violation of the State law, but shielded by the decision in Rhodes *v.* Iowa case, heretofore referred to.

The prosecuting attorney, in connection with the county auditor of Harrison County, in my own State, has sought to place the principals of these agents upon liquor tax duplicate of the State on the ground that they were allowing their offices to be run as liquor stores. But if the decision of the Federal court of the Iowa district is upheld, as under the Rhodes decision it is likely to be, no redress will be possible, and it will again be found that in a State like Ohio, not having the prohibitory policy, citizens of other States can carry on legally in local-option territory what the law of the State and of the community forbids to its own citizens. To show that the situation is a grievous and unnatural one, I quote from the opinion of the supreme court of the State of Iowa in the case of State *v.* Pat Hanaphy, decided May 15, 1902, as follows:

These holdings, it is needless to observe, render the power of the State to prohibit the traffic in liquors to a large extent nugatory and leave the agents of nonresident dealers to ply their trade with boot leggers and other resident violators of the law without effective hindrance; but we have only to declare the law as we find it. It

is proper to add that all these cases under the authority of which this appeal is disposed of have been decided by a divided court. The dissent of Justices Harlan, Gray, Waite, Shiras, and Brown is supported by very persuasive reasoning and great weight of authority, but whatever we may think of the comparative merits of the arguments employed, we are in duty bound to follow the authoritative pronouncements of the court whose decision upon this and kindred questions is final. (90 N. W. Reporter, 60.)

We feel that Congress should strain a point to give to the State full and complete exercise of those powers which admittedly were reserved to themselves upon the adoption of the Federal Constitution, referring especially to the police powers of the State, under which come all measures for the protection of the life, health, morals, and prosperity of the people within the State, so long as such regulations or prohibitions as the State may provide do not violate any part of the Federal Constitution. It is not my purpose to enter into a discussion of the legal or constitutional aspect of the claim presented to the committee. I shall have the pleasure of introducing Andrew Wilson, esq., an attorney of this city and member of the legislative committee of our District of Columbia League, who will speak on those points. I think I may say, though, before concluding, that there is no questioning the fact that the regulation or prohibition of the liquor traffic is within the police powers of the State, and without the purview of Congressional action. On the other hand, it is admitted that the regulation of the interstate commerce of the country is, by the terms of the Constitution by the third clause of the eighth section of Article I, confided exclusively to Congress.

The decisions of the Supreme Court touching the liquor question have unquestionably settled the following point, namely: That the State has exclusive and unlimited power to deal with the internal liquor traffic as it may see fit, subject always to the limitations just referred to (License Cases, Mugler *v.* Kansas, et al.). And in the Bowman *v.* Northwestern Railway case it was held that while a State could pass laws according to its legislative will, regulating or prohibiting the liquor traffic within the State, it could not prevent a nonresident dealer from shipping liquor into the State without violating the interstate-commerce clause of the Constitution. In the subsequent case of Leisy *v.* Hardin, they held further that the right of a resident importer to receive goods shipped to himself from another State, and the first sale by him of the original unbroken package, could not be prohibited by the State without the express permission of Congress.

It may be remarked in passing that for many years theretofore it had been held by the Supreme Court that silence on the part of Congress virtually gave the State permission to act with reference to commerce, which assuredly came within the interstate-commerce clause of the Constitution. The decision just referred to reversed the previous holdings of the court and compelled the passage of the well-known Wilson law. This law was held to be constitutional in the case of Rahrer (140 U. S., 545), but in the Rhodes case, in construing the words "arrival in the State," etc., it was held that within the meaning of the law "arrival" meant after delivery to the consignee. So that the net result of the passage of the Wilson law was simply to forbid the sale by the consignee of the goods imported by him from another State. Following this decision various subterfuges and schemes to evade the local law had been devised and plied, as set

forth heretofore, and from these conditions we appeal to Congress for redress.

The opposition which, it should be remarked, comes from those who have pecuniary reasons or interests in the violations of law in order to hold a secure market for their liquors—namely, distillers, brewers, and wholesale liquor dealers of the country—is stated to be on constitutional grounds. The claim is made first that the proposed legislation is unconstitutional because it is a delegation of Congressional authority to the State, or because the exercise of the powers conferred would give to the State extraterritorial jurisdiction over interstate shipments of liquors. I think it needless to argue this point. Nothing can be clearer than the utterance of Mr. Chief Justice Fuller, rendering the decision of the court in the Rahrer case (148 U. S., 561–564):

> By the adoption of the Constitution the ability of the several States to act upon the matter solely in accordance with their own will was extinguished, and the legislative will of the General Government substituted. No affirmative guaranty was thereby given to any State of the right to demand as between it and the others what it could not have obtained before, while the object was undoubtedly sought to be attained of preventing commercial regulations partial in their character or contrary to the common interests. And the magnificent growth and prosperity of the country attest the success which has attended the accomplishment of that object. But this furnishes no support to the position that Congress could not, in the exercise of the discretion reposed in it, concluding that the common interests did not require entire freedom in the traffic in ardent spirits, enact the law in question. In so doing Congress has not attempted to delegate the power to regulate commerce, or to exercise any power reserved to the States, or to grant a power not possessed by the States, or to adopt State laws. It has taken its own course and made its own regulation, applying to these subjects of interstate commerce one common rule, whose uniformity is not affected by variations in State laws in dealing with such property.
>
> The principle upon which local-option laws, so called, have been sustained is that while the legislature can not delegate its power to make a law it can make a law which leaves it to municipalities or the people to determine some fact or state of things upon which the action of the law may depend; but we do not rest the validity of the act of Congress on this analogy. The power over interstate commerce is too vital to the integrity of the nation to be qualified by any refinement of reasoning. The power to regulate is solely in the General Government, and it is an essential part of that regulation to prescribe the regular means for accomplishing the introduction and incorporation of articles into and with the mass of property in the country or State. (12 Wheat., 448.)
>
> No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.
>
> The differences of opinion which have existed in this tribunal in many leading cases upon this subject have arisen, not from a denial of the power of Congress, when exercised, but upon the question whether the inaction of Congress was in itself equivalent to the affirmative interposition of a bar to the operation of an undisputed power possessed by the States.
>
> We recall no decision giving color to the idea that when Congress acted its action would be less potent than when it kept silent.
>
> The framers of the Constitution never intended that the legislative power of the nation shall find itself incapable of disposing of a subject-matter specifically committed to its charge.
>
> * * * * * * *
>
> Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.
>
> * * * * * * *
>
> This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the act of Congress.

Next it is contended that in a subsequent decision the United States Supreme Court, in the case of Vance *v.* Vandercook, held that the right of a citizen to import liquor from another State or from foreign countries for his own personal use was a right that could not be interfered with by State legislation. We think an examination of this case, together with previous pronouncements of the court, particularly in the Mugler *v.* Kansas case, in 1887, will show that no such unqualified and sweeping declaration was made concerning such importation should Congress act so as to remove the present obstacles to the enforcement of such legislation on the subject. However, this contention and observation in regard to it are entirely foreign to the subject-matter now before the committee. If such importation for personal use is a constitutional right which can not be impaired by State legislation, then the passage of the Hepburn bill can not render such an act unlawful or render valid any such enactment by the States.

All that the Hepburn bill will do and all we urge its enactment for is simply to give full scope to the legitimate exercise of the police powers of the State in dealing with this question. It will not be making an unconstitutional law valid; it will not set up one policy of the State above another; it will simply give the States jurisdiction over liquors within its own borders before as well as after delivery. If the opposition to this measure fear direful consequences to their business because of its enactment, they must realize that if it should be passed they have every opportunity to appeal to the good judgment and common sense of the people of the various States, through their State legislatures, for the enactment of legislation which they desire, or for the repeal of legislation to which they are opposed, or for the defeat of proposed legislation which they may deem inimical to the interests of their trade.

But I submit to the committee that the friends of this measure are entirely willing that this course should be pursued by both the friends and opponents of the liquor traffic. We simply ask, as Chief Justice Fuller said in his opinion in the Rahrer case, that Congress shall enact a law which will remove "an impediment to the enforcement of the State laws in respect to imported packages in their original condition created by the absence of a specific utterance on its part."

It is further claimed that, while Congress has the power to regulate, it has not the power to prohibit interstate commerce. It seems to me that if the Chief Justice's statement in the Rahrer case which was just quoted was a sound one the answer to this objection has already been given; and if the decision is not the correct one, the Wilson law itself would not have been constitutional, because Congress would then be held to have legislated for the States, which confessedly it could not do. From the very foundation of the Government down the right to sell an imported article was held to be an integral part of interstate or foreign commerce; and yet by the exercise of Congressional power, specifically upheld in the Leisy *v.* Hardin case, the right was taken away from the importer of intoxicating liquors to sell the same after the passage of the Wilson law, and as construed in Rhodes *v.* Iowa, heretofore referred to. There is a wide divergence of opinion as to whether Congress can simply regulate or prohibit interstate commerce, or, more accurately speaking, as to whether the term "regulate" includes the power to prohibit. But we rest on the assertion of the Chief Justice concerning the effect of the legislation proposed, as heretofore quoted in the Rahrer case. It seems to me that one of the strongest reasons

in support of the constitutionality of the proposed measure and against the statement advanced that Congress can not prohibit interstate commerce by passing a law which would be prohibitive in its results is found in the fact that Congress has already done it in the case of the transportation of nitroglycerin and other similar explosive substances, the proviso as to which in the interstate-commerce law reads:

> Any State, Territory, district, city, or town within the United States should not be prevented by the language used from regulating or from prohibiting the traffic in the transportation of those substances between persons or places lying or being within their respective territorial limits or from prohibiting an introduction thereof into such limits for sale, use, or consumption therein.

In view of the manifold and admitted evils of the liquor traffic and the harmful results that everywhere follow from the sale or use of intoxicating liquors, of which Federal, State, and district courts have all taken cognizance, as shown by the following extracts from court decisions, we ask for the largest measures of redress from the conditions which have been named, and which is only possible either by the legislation proposed, allowing said jurisdiction to attach immediately upon the arrival of liquors within the State, or by a reclassification of the subjects of interstate commerce:

> By the general concurrence of opinion of every civilized and Christian community there are few sources of crime and misery to society equal to the dramshop, where intoxicating liquors in small quantities to be drunk at the time are sold indiscriminately to the parties applying.
>
> The right to sell intoxicating liquors, so far as such a right exists, is not one of the rights growing out of citizenship of the United States.
>
> It is not necessary for the sake of justifying the State legislation now under consideration to array the appalling statistics of misery, pauperism, and crime which have their origin in the use or abuse of ardent spirits. The police power, which is exclusively in the States, is alone competent to the correction of these great evils, and all measures of restraint or prohibition necessary to effect the purpose are within the scope of that authority. There is no conflict of power or of legislation as between the States and the United States; each is acting within its sphere and for the public good; and if a loss of revenue should accrue to the United States from a diminished consumption of ardent spirits, she will be the gainer a thousandfold in the health, wealth, and happiness of the people.
>
> The evils attending the vice of intemperance in the use of spirituous liquors are so great that a natural reluctance is felt in appearing to interfere within constitutional grounds with any law whose avowed purpose is to restrict and prevent the mischief.

Great solicitude is expressed by the brewers and distillers for the supposed infraction of the Constitution which this law will entail. Permit me to say that nothing would prevent them from joining with the petitioners for this legislation for the passage of the Hepburn bill if they were assured that it would fail before the courts. If their solicitude for the Constitution and the laws were to be directed along practical lines, we could suggest that a close observance of and conformity to existing regulations and prohibitions by the members of that trade over the entire country would contribute to that end. The reason the Wilson law was demanded and passed was because of their unwillingness to obey the law and live in conformity with regulations, etc., established by the people of the States; and the necessity for the legislation proposed has likewise come about because of their ingenuity in seeking and their willingness to employ methods for evading and violating the law.

In conclusion, we ask for this legislation because of the need for it throughout the States, because of the schemes and artifices devised for breaking the law, and we feel ourselves entitled to the proposed relief.

During the past several years the liquor interests have clamored for certain legislation affecting their internal trade, legislation to which we could have offered serious opposition and incited a tremendous protest over the entire country. We abstained therefrom as temperance people, not because arguments could not have been advanced from our standpoint against the reduction of the brewers' tax and certain financial concessions urged and secured by the distillers, but because we preferred to keep our hands off those matters affecting the purely commercial and internal interests of the trade, so that we could be free to ask for such fair and reasonable and legitimate legislation as we needed, and to which we believe we are entitled, and as partially represented in the bill now before your committee.

I have the honor to represent the American Anti-Saloon League in support of what is known as the Hepburn-Dolliver bill (H. R. 4072, S. 1390). The league is a federation of the churches and temperance organizations of the States. It is interdenominational and omnipartisan. Besides nearly two hundred national and State bodies leagued together through its agency, some of which represent as many as a million and a half members; others several hundred thousand, and many less, and all officially represented on its national board, it has definite State auxiliaries in 39 States and Territories, which likewise federate the church and temperance forces within their own States. It seems entirely safe to say that in this way we represent at least 8,000,000 to 10,000,000 of people, and in their behalf would respectfully urge the favorable consideration and passage of the Hepburn-Dolliver bill.

ARGUMENT OF MR. ANDREW WILSON, ATTORNEY AT LAW, WASHINGTON, D. C., IN FAVOR OF THE PASSAGE OF THE ACT.

Mr. WILSON. Mr. Chairman and Senators, the article of the Constitution which gives Congress the power to regulate commerce is very brief and simple:

> The Congress shall have power * * * to regulate commerce with foreign nations and among the several States.

There never has been and is not now any decision of any court which has in any wise limited the power of Congress to deal as it may choose with commerce among the States. Unquestionably there is a line of demarcation, one that is well defined, between the police powers of the States and the power which Congress may exercise over the commerce among the several States.

The question came up in the leading case of Gibbons *v.* Ogden (9 Wheaton, 1, 203), in which one of the justices of the Supreme Court of the United States, in concurring with Mr. Chief Justice Marshall, used almost the identical language that had been used by that great constitutional lawyer, Mr. Webster, in relation to the power of Congress, and it was decided in that case that Congress is supreme; that the word "regulate" means control; that in the first place all the powers under the confederation of the States was possessed by the States and remained in the States except as they were given to the higher or sovereign power of the United States. But the uniform effect of the decisions in all the cases from Wheaton down is that the police power of the State is subordinate to the supreme, sovereign power which has been granted to Congress. There is no prohibition or inhibition in

the Constitution of the United States curtailing the power of Congress to regulate or control commerce among the States. Every statement which says that Congress may not pass any act regulating interstate commerce is not in accord with the decisions of the Supreme Court of the United States. This statement is made after a careful examination of the cases and can not be successfully controverted.

The question was raised a few moments ago by one of the Senators present as to the power of the United States to delegate any of its power to the States to prohibit or destroy. I submit to you that notwithstanding all that has been said in regard to personal liberty and in regard to the right to prohibit or destroy, the word "regulate" itself means the power to control, and you can find in the Bowman case, which led to the passage of the Wilson law, no less than seven or eight places where the word "prohibit" and like terms are used in connection with the word "regulate." They go hand in hand, and no doubt were in the minds of the Supreme Court of the United States in rendering that decision——

Mr. HOUGH. May I ask the gentleman a question?

The CHAIRMAN. No; none but members of the committee can do that now.

Mr. WILSON. This is what the Supreme Court said in the case of Leisy *v.* Hardin:

> But notwithstanding it is not vested with supervisory power over matters of local administration, the responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, to remove the restriction upon the State in dealing with imported articles of trade within its limits which have not been mingled with the common mass of property therein if in its judgment the end to be secured justifies and requires such action.

Nothing can be plainer than this statement of the Supreme Court of the United States that if Congress decides that the end to be secured justifies and requires such action it may do it. That was in the original-package decision.

It has been said that it does not lie in the mouths of reformers to make these statements. There come times and circumstances when reformation is necessary. But we stand not so much for reformation as for that which is infinitely greater—formation. The very thing which the States are seeking is the power to develop without the incubus upon them of the evil influences which naturally and almost inevitably attend the sale, traffic in, and use of intoxicating liquors.

Permit me to quote from the decision of the Supreme Court of the United States in the case of Crowly *v.* Christensen (137 U. S., 90, 91). Mr. Justice Field, in delivering the opinion of the court, said:

> It is urged that as the liquors are used as a beverage, and the injury following them, if taken in excess, is voluntarily inflicted and is confined to the party offending, their sale should be without restrictions, the contention being that what a man shall drink, equally with what he shall eat, is not properly matter for legislation.
>
> There is in this position an assumption of a fact which does not exist—that when the liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in self-abasement, which it creates. But as it leads to neglect of business and waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community there are few sources of crime and misery to society equal to the dramshop, where intoxicating liquors in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source.

In Miller *v.* Ammon (145 U. S., 421, 427) Mr. Justice Brewer, speaking for the court, said:

By common consent the liquor traffic is freighted with peril to the general welfare, and the necessity of careful regulation is universally conceded. Compliance with those regulations by all engaging in the traffic is imperative.

I desire to read from the decision in the Rhodes case, the case cited by my friend on the other side:

It has been settled that the effect of the act of Congress is to allow the statutes of the several States to operate upon packages of imported liquor before sale. (In re Rahrer, 140 U. S., 545.)

Let me read a few words from the decision in that Rahrer case (140 U. S., 564):

Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

It appears from the agreed statement of facts that this liquor arrived in Kansas prior to the passage of the act of Congress, but no question is presented here as to the right of the importer in reference to the withdrawal of the property from the State, nor can we perceive that the Congressional enactment is given a retrospective operation by holding it applicable to a transaction of sale occurring after it took effect. This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the act of Congress.

Again, I say, recognizing the power of Congress to act as it may please in regard to this matter.

Much comment has been made upon the decision in the case of Rhodes *v.* Iowa as to what "arrival" means and when the law becomes operative. Let me read the exact language of the court:

The words "shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory" in one sense might be held to mean arrival at the State line. But to so interpret them would necessitate isolating these words from the entire context of the act and would compel a construction destructive of other provisions contained therein. But this would violate the fundamental rule requiring that a law be construed as a whole, and not by distorting or magnifying a particular word found in it. It is clearly contemplated that the word "arrival" signified that the goods should actually come into the State, since it is provided that "all fermented, distilled, or other intoxicating liquors or liquids transported into a State or Territory," and this is further accentuated by the other provision, "or remaining therein for use, consumption, sale, or storage therein."

This is a complete answer to my friend on the other side.

The fair inference from the enumeration of these conditions, which are all-embracing, is that the time when they could arrive was made the test by which to determine the period when the operation of the State law should attach to goods brought into the State. But to uphold the meaning of the word "arrival," which is necessary to support the State law, as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all. This follows from the fact that if "arrival" means crossing the line, then the act of crossing into the State would be a violation of the State laws, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same. Thus, if the construction of the word "arrival" be that which is claimed for it, it must be held that the State statute attached and operated beyond the State line confessedly before the time when it was intended by the act of Congress it should take effect.

That was the decision—that the law was unconstitutional in that it acted prior to the time when Congress gave it the right to act. Again:

If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the

several States extraterritorial operation, for, as held in the Bowman case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate-commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute. The force of this view is well illustrated by the conclusions of the court below, where it is said:

"Was the defendant, in the removal of the liquor, engaged in transporting or conveying it within the meaning of our statute? The language of the statute is broad enough to cover the act of the defendant in removing the liquor from the platform to the freight room of the depot. He was one of the instruments necessary to complete the act of transportation. If it be not so, then clearly he is within the terms of the act, as he conveyed 'the liquor from one point to another within this State.' His guilt is not to be determined by the distance he conveyed the package, but his conveying it any distance was a violation of law. With the propriety of legislation making such an act a crime, and with the severity of the punishment attached to doing the act, we have nothing to do."

If it had been the intention of the act of Congress to provide for the stoppage at the State line of every interstate-commerce contract relating to the merchandise named in the act, such purpose would have been easy of expression.

Here is the whole thing in a nutshell. If Congress declares it to be so the Supreme Court of the United States will uphold that declaration:

The fact that such power was not conveyed, and that, on the contrary, the language of the statute relates to the receipt of the goods "into any State or Territory for use, consumption, sale, or storage therein," negatives the correctness of the interpretation holding that the receipt into any State or Territory for the purposes named could ever take place.

Again, from page 424 of this case:

Whilst it is true that the right to sell free from State interference interstate-commerce merchandise was held in Leisy *v.* Hardin to be an essential incident to interstate commerce, it was yet but an incident, as the contract of sale within a State in its nature was usually subject to the control of the legislative authority of the State. On the other hand, the right to contract for the transportation of merchandise from one State into or across another involved interstate commerce in its fundamental aspect, and imported in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States, since it embraced a contract which must come under the laws of more than one State. The purpose of Congress to submit the incidental power to sell to the dominion of State authority should not, without the clearest implication, be held to imply the purpose of subjecting the State laws to a contract which in its very object and nature was not susceptible of such regulation, even if the constitutional right to do so existed, as to which no opinion is expressed. And this view is cogently illustrated by the opinion in the Bowman case, where it was said (pp. 486–487):

"Has the law of Iowa any extraterritorial force which does not belong to the State of Illinois? If the law of Iowa forbids the delivery, and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of Hall *v.* De Cuir (95 U. S., 485, 488) is exactly in point. It was there said: 'But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without, or goes out from within. While it purports only to control the carrier when engaged within a State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage.'"

The leading case construing this clause of the Constitution is Gibbons *v.* Ogden (9 Wheat., 1). Chief Justice Marshall, in deciding the case, said:

In the last of the enumerated powers, that which grants expressly the means for carrying all others into execution, Congress is authorized to make all laws which

shall be necessary and proper for the purpose. But this limitation on the means which may be used is not extended to the powers which are conferred. * * * If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well-settled rule that the object for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction. * * * We know of no rule for construing the extent of such powers other than is given by the language of the instrument which confers them, taken in connection with the purposes for which they were conferred. * * * We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself and acknowledges no limitations other than are prescribed in the Constitution. * * * The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at elections are in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. * * * It has been contended by counsel for the appellant that, as the word to "regulate" implies in its nature full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were, as well as to those which are altered. It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that on which it has operated. There is great force in this argument, and the court is not satisfied that it has been refuted (209).

Johnson, J., concurring in the decision, used the following language:

The power to regulate commerce, here meant to be granted, was that power to regulate commerce which previously existed in the States. But what was that power? The States were unquestionably supreme, and acknowledged to reside in every sovereign State. The definition and limits of that power are to be sought among the features of international law; and as it was not only admitted but insisted on by both parties in argument that, "unaffected by a state of war, by treaties, or by municipal regulations, all commerce among independent States was legitimate," there is no necessity to appeal to the oracles of the jus commune for the correctness of that doctrine. The law of nations, regarding man as a social animal, pronounces all commerce legitimate in a state of peace until prohibited by positive law. The power of a sovereign State over commerce, therefore, amounts to nothing more than power to limit and restrain it at pleasure. And since the power to prescribe the limits of its freedom necessarily implies the power to determine what shall remain unrestrained, it follows that the power must be exclusive; it can reside but in one potentate, and hence the grant of this power carries with it the whole subject, leaving nothing for the State to act upon.

No statute of the United States that I know of was ever passed to permit a commerce, unless in consequence of its having been prohibited by some professed statute. * * * Commerce in its simplest signification means exchange of goods; but in the advancement of society labor, transportation, intelligent cares, and various mediums of exchanges become commodities and introduce commerce; the subject, the vehicle, the agent, and the various operations become the object of commercial regulations.

"If in the present case," said Mr. Justice Matthews in the Bowman case, "the law of Iowa operated upon all merchandise sought to be brought from another State into its limits, there can be no doubt that it would be a regulation of commerce among other States," and he concludes that this must be so, though it applied only to one class of articles of particular kind. The legislation of Congress on the subject of interstate commerce by means of railroads, designed to remove trammels between the different States, and upon the subject of the transportation of passengers and merchandise (Rev. Stat., secs. 4252 to 4289, inclusive), including the transportation of nitroglycerin and other similar explosive substances, with the proviso that, as to them, "any State, Territory, district, city, or town within the United States" should not be prevented by the language used "from regulating or prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective

territorial limits, or from prohibiting introduction thereof into such limits for sale, use, or consumption therein.

So far as these regulations made by Congress extended, they are certainly indications of its intention that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself or by the States in particular cases by the express permission of Congress.

Again, in the same case, quoting from the License cases (5 How., 504, 599), it was said:

> The assumption is that police power was not touched by the Constitution, but left to the States as the Constitution found it. This admitted; and whenever a thing from character or condition is of a description to be regulated by that power in the State, then the regulation may be made by the State and Congress can not interfere. But this must always depend on facts subject to legal ascertainment, so that the injured may have redress. And the fact must find its support in this, whether the prohibited article belongs to, and is subject to be regulated as part of, foreign commerce or of commerce among the States. * * * It (State) may not, under the cover of exerting the police powers, substantially prohibit or burden either foreign or interstate commerce. * * * The reach in the statute was far beyond its professed object, and far into the realm which is within the exclusive jurisdiction of Congress.

Referring to sections 4278 and 4279 of the Revised Statutes, which relate to the transportation of nitroglycerin and other explosives, the court said:

> Section 4280 provides that "the two preceding sections shall not be so construed as to prevent any State, Territory, district, city, or town within the United States from regulating or from prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limits for sale, use, or consumption therein."

This statement was quoted with approval in the case of Leisy *v.* Hardin.

Thus we have legislative precedent for the proposed enactment, with judicial approval thereof.

Referring to intoxicating liquors and the attempt of the State to prohibit their importation, Mr. Chief Justice Fuller said:

> Being thus articles of commerce, can a State, in the absence of legislation on the part of Congress, prohibit their importation from abroad or from a sister State? Or, when imported, prohibit their sale by the importer? If the importation can not be prohibited without consent of Congress, when does property imported from abroad, or from a sister State, so become part of the common mass of property within a State as to be subject to its unimpeded control? (Leisy *v.* Hardin, 135 U. S., 100–110.)
>
> It was declared unconstitutional for a State to forbid a common carrier to bring intoxicating liquors into the State because essentially a regulation of commerce among the States, and not sanctioned by the authority, express or implied, by Congress. (Bowman *v.* Railway Company, 125 U. S., 465; Leisy *v.* Hardin, 135 U. S., 100–111.)
>
> And Congress, under its general power to regulate commerce with foreign nations, may prescribe what article of merchandise shall be admitted and what excluded, and therefore admit, or not, as it shall deem best, the importation of ardent spirits. (Leisy *v.* Hardin, 135 U. S., 109, 116.)
>
> The grant of powers being in the same clause, it follows that a like conclusion follows in the case of commerce among the States.
>
> In the case of Vance *v.* Vandercook Company (170 U. S., 438) the authority of the State to control the incidental right of sale in the original package was upheld "since Congress in the exercise of its lawful authority has recognized the power."

Again, in the same case, the court said:

> But the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law.

The contention, therefore, that a common carrier must accept intoxicating liquor for transportation into another State for the personal use of the consignee depends entirely upon the action or nonaction of Congress. If, in the wisdom and discretion of Congress this bill should become a law, a common carrier would accept intoxicating liquors for such shipment at its peril.

The purpose of the bill is not to prohibit the sale of liquor in any State, but to leave the States free to exercise their acknowledged police power.

When the courts speak of unconstitutional acts, they refer to laws passed by the States and not to any enactments of the Congress. State legislation is unconstitutional only when it usurps the unused power of Congress or contravenes some law of Congress relating to commerce among the States.

As it was suggested that the bill should be discussed from a constitutional standpoint, and as it is clear that the opponents of this bill have not interpreted it in accord with the highest judicial authority, it has been deemed wise to make the freest use of the decisions of the Supreme Court of the United States in this reply. They are conclusive and they are authoritative.

As to the wisdom and expediency of such legislation the Congress must decide.

The president of the Brewers' Association argues in opposition to this bill that its enactment into law will cause a decreased consumption of mild liquors, light wines, and beers, and will cause an increased consumption of ardent spirits, thus defeating what he terms "true temperance" and promoting intemperance. Anacharsis said that "the vine bears the three grapes of drunkennesss, of pleasure, and of sorrow; and happy it is if the last can cure the mischief which the former work." Notwithstanding this anomalous position, the American distillers have deemed it of sufficient importance to them to send counsel to this hearing from the city of St. Louis to oppose this bill.

Justice and proper consideration of personal liberty are urged upon us. The broad view of citizenship, which has for its purpose the "promotion of the general welfare and the protection of individual as well as collective rights," has no place for the liquor traffic. It is destructive and not constructive. One hundred thousand of those who should be among the brightest, best, and most useful in this fair country of ours are sacrificed every year upon the alter of Bacchus, and $1,200,000,000 are annually withdrawn from constructive development and turned into his coffers; and yet his thirst for blood is not quenched nor his lust for gold satisfied. Crime, misery, and diabolism are his offspring. Education and repression are both needed. The president of the Brewers' Association says this law will lay the "ax at the root of the tree." But what tree? Is it the deadly upas or that one on either side of the pure river of water of life, clear as crystal, whose leaves are for the healing of the nations? "Wherefore by their fruits ye shall know them." "And now the ax is laid unto the root of the trees; therefore every tree which bringeth not forth good fruit is hewn down and cast into the fire."

O